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ABSTRACT

Executive Order 11246 requires presidents of higher education institutions to meet certain equal employment responsibilities and prohibits recipients of Federal contracts from discriminating in employment on the basis of race, color, religion, sex, or national origin. It also calls for affirmative steps to attract more women and minority applicants for employment consideration. The guidelines reaffirm that goals and timetables are required as a part of affirmative action programs, make clear that quotas are not required or permitted, and describe in functional terms the difference between the two. Nothing in the affirmative action concept requires a university to employ or promote any faculty member who is less qualified than other applicants competing for that position. Affirmative action does require, however, that any standards or criteria that have had the effect of excluding women and minorities be eliminated unless such criteria are conditions of successful performance in the particular position involved. (Author/HS)

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October 4, 1972

Statement on Guidelines for Application of Executive Order 11246 to Higher Education Institutions Receiving Federal Contracts

The Department of Health, Education, and Welfare has provided guidance to presidents of higher education institutions in order to meet equal employment responsibilities under Executive Order 11246.

A 17-page document with all relevant laws and regulations is being mailed to more than 2500 university and college presidents.

The Executive Order prohibits recipients of Federal contracts from discriminating in employment on the basis of race, color, religion, sex, or national origin. It also calls for affirmative steps to attract more women and minority applicants for employment consideration.

Authority for the guidelines is the Executive Order and the Department of Labor Regulation. The HEW guidelines have been in preparation for more than a year. They do not represent new rules, regulations, or laws, but articulate existing rules and regulations as they apply specifically to institutions of higher education.

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Representatives of colleges and universities, women's groups, minorities, and others affected by the guidelines have been consulted in the drafting process. It is believed that the guidelines respond to the major questions raised by college administrators and others affected by the Executive Order.

Guidance of this kind is always subject to updating in the light of new experience. In order to assure that the guidelines continue to provide universities with the necessary direction and assistance, a higher education Advisory Committee to the Office for Civil Rights will be appointed shortly. The Advisory Committee will include representatives of higher education institutions, women's groups, minority groups, and other affected groups.

The guidelines reaffirm that goals and timetables are required as a part of affirmative action programs, make clear that quotas are not required or permitted, and describe in functional terms the difference between the two. A careful reading of this document should underscore the following points:

--Goals are projected levels of achievement resulting from an analysis by the contractor of his deficiencies and what can reasonably be done to remedy them, given the availability of qualified minorities and women and the expected turnover in his work force.

--When used correctly, goals are an indicator of probable compliance and achievement, not a rigid or exclusive measure of performance as would be the case if quotas were required.

--If the contractor makes a genuine good faith effort and is still unable to meet the goals he has established because of changed employment conditions or for other good reasons, he has complied with the letter and the spirit of the Executive Order. If, on the other hand, good faith effort was lacking, the contractor is in non-compliance and legal sanctions will be forthcoming unless corrective action is taken.

The guidelines also state that nothing in the Executive Order requires that a contractor eliminate or dilute nondiscriminatory standards of educational excellence. Specifically, nothing in the affirmative action concept requires a university to employ or promote any faculty member who is less qualified than other applicants competing for that position. Affirmative action does require, however, that any standards or criteria which have had the effect of excluding women and minorities be eliminated unless such criteria are conditions of successful performance in the particular position involved.

The guidelines deal at length with the recruitment issue because this is an area that offers the greatest

opportunity for including women and minorities in academic and nonacademic areas.

Basically, the responsibility of the higher education contractor is to examine recruitment practices and where necessary, to make vigorous and systematic efforts to locate and encourage the candidacy of qualified women and minorities.

Recruiting efforts are designed to get results. Standards for hiring, therefore, should be accessible to all employees and applicants and may not draw distinctions based on race, color, religion, sex, or national origin.

The guidelines also cover such important issues as anti-nepotism rules, job classifications, training, promotion, back pay, leave policies with regard to pregnancy, and many other every-day problems that administrators face.

The Department of Labor is announcing today in the Federal Register its intention to amend the regulations to remove the present exemption of public educational institutions from the requirement of maintaining a written affirmative action plan. When effective, all educational institutions, both public and private, will have the same affirmative action obligations under the Executive Order. (See page 2 of the guidelines for further discussion on this issue.)